



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 10 1998

MEMORANDUM

SUBJECT: Underground Storage Tank 1998 Deadline Enforcement Strategy

FROM: Steven A. Herman, Assistant Administrator
Office of Enforcement and Compliance Assurance
Timothy Fields, Jr., Acting Assistant Administrator
Office of Solid Waste and Emergency Response

TO: Regional Administrators, Regions I-X

Attached is EPA's enforcement strategy for the upcoming 1998 underground storage tank (UST) deadline. This final document reflects comments we received from the Regions and State regulatory agencies. The strategy emphasizes actions EPA and the States will take to implement the UST requirements that go into effect on December 22, 1998. By this deadline, all sub-standard UST systems installed before December 22, 1988 that are not already protected against corrosion, spills, and overfills must be upgraded, replaced, or properly closed. These requirements are aimed at preventing leaks from underground storage tanks. Such leaks can and often do contaminate groundwater and thus pose a real threat to drinking water supplies. In many instances, leaks from these tanks have caused fires and explosions and released gasoline fumes into schools, homes, and other buildings.

EPA Administrator Carol Browner has repeatedly and publicly stated that the Agency will not extend the 1998 deadline. Under EPA's regulations, which have been in effect since December 1988, owners and operators have had 10 years to come into compliance.

The Agency has an obligation to ensure compliance with the UST regulations. While EPA considers States the primary enforcers, EPA's role will be to augment States' efforts, where necessary. In addition, EPA has the primary responsibility for enforcement of UST requirements in Indian Country.

The document also clarifies EPA's policy that sub-standard UST systems should not operate after December 22, 1998. Those who delay can be subject to monetary penalties of up to \$11,000 per day for each violation throughout their period of non-compliance.



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If you have any further comments on this Enforcement Strategy please contact Joan Olmstead (202) 564-4018 in the Office of Enforcement and Compliance Assurance or Sammy Ng (703) 603-7166 in the Office of Underground Storage Tanks.

Attachment

cc: Enforcement Coordinators, Regions I-X
 UST/LUST Regional Program Managers, Regions I-X
 UST/LUST Division Directors, Regions I-X
 UST/LUST Regional Branch Chiefs, I-X
 UST/LUST Regional Attorneys, Regions I-X
 UST/LUST Enforcement Contacts, Regions I-X
 Julie Kaplan, DOJ - EES

EPA'S STRATEGY FOR ENFORCEMENT OF REGULATORY REQUIREMENTS APPLICABLE TO UNDERGROUND STORAGE TANK (UST) FACILITIES

AUGUST 10, 1998

This document describes the U.S. Environmental Protection Agency's (EPA) strategy for enforcing the regulatory requirements applicable to underground storage tanks (USTs) as of December 1998. EPA will work with States and, as necessary, augment State efforts by taking Federal action.

This document was developed jointly by EPA's Office of Underground Storage Tanks (OUST) and Office of Enforcement and Compliance Assurance (OECA), in concert with Regional Office UST program managers and enforcement coordinators.

Background

By December 22, 1998, all USTs installed before December 22, 1988 that are not already protected against corrosion, spills, and overfills must be upgraded, replaced, or properly closed. The EPA Administrator has already announced that the Agency will not extend the deadline. Other UST regulatory requirements, including those for release detection, financial responsibility, and reporting and remediation of UST releases will remain in effect. In the Code of Federal Regulations (CFR), EPA's requirements appear in 40 CFR Part 280.

EPA can enforce the Federal requirements in States and territories that do not have EPA's approval to run their own UST programs in lieu of the Federal program, and in Indian Country. In approved States and territories, EPA can enforce State regulations that were included in the State Program Approval process, even if they are more stringent than the corresponding Federal regulations. The Agency cannot enforce State regulations that are broader in scope than the Federal regulations, e.g., those applicable to UST systems not covered by the Federal regulations, such as heating oil tanks for direct consumptive use.

EPA's goal is full compliance with the 1998 requirements as quickly as possible. EPA does not and will not condone non-compliance. EPA's regulations do not provide for a grace period in which violations can be corrected without a penalty. By December 1998, UST owners/operators will have had ten years to comply with these requirements. During this 10-year period, EPA conducted extensive outreach activities to inform the regulated community of the upcoming 1998 technical requirements and provided compliance assistance to owners and operators of UST facilities. Given the threat that sub-standard tanks pose to human health and the environment, EPA believes it is essential to ensure that violations are promptly corrected.

What EPA expects States to do

The philosophy that has guided the UST program since its inception is that States have the primary responsibility for implementation and enforcement of UST regulations (except in Indian Country). EPA therefore has devoted a major share of its UST resources to supporting and helping strengthen State programs and will continue doing so.

EPA expects States to take the lead in securing compliance with the 1998 UST requirements. EPA recognizes that States can use various enforcement activities to achieve compliance. These enforcement activities can include filing administrative or judicial actions

or immediately stopping operation of a non-complying tank (e.g., by using their “red tag” authority). Some States do not have statutory authority to assess and collect penalties administratively and must initiate a judicial action if penalties are to be assessed. While the judicial process may be time-consuming, States should use their enforcement authority to demonstrate to UST owners and operators that they cannot ignore UST requirements with impunity.

In the months leading up to the December 1998 deadline, EPA expects that States generally will continue to monitor and enforce compliance with UST requirements already in effect, including those for release detection; remind UST owners/operators of their obligation to upgrade, replace, or properly close sub-standard UST systems; make UST owners/operators aware that enforcement action will be taken against those who miss the deadline; and, in concert with EPA Regional Offices, develop plans for post-deadline compliance and enforcement activity.

EPA expects that States will expeditiously identify non-complying UST facilities, including marketers and non-marketers, after the deadline and require those facilities to be promptly upgraded, replaced, or properly closed.

States with UST programs that lack UST regulations or a fixed deadline for upgrading, replacing, or closing sub-standard UST systems should work with EPA Regional Offices to develop procedures for dealing with violations; such procedures may include referring cases to EPA for appropriate action.

EPA will continue to assist States

EPA is prepared to assist States in carrying out their UST compliance and enforcement responsibilities by continuing its own extensive outreach to UST owners/operators; helping States train UST inspectors; fostering exchanges of information among the States about effective means of securing compliance; and supporting States' efforts to design and implement cost-effective ways of increasing their field presence.

When EPA will take action

Under RCRA Subtitle I, EPA has the authority to and will inspect UST facilities in order to assess compliance with the UST regulations. While EPA may take enforcement actions in all States, its activities will be concentrated in States that have less active UST enforcement programs. EPA also will try to be responsive to requests from any State for support in dealing with Federal agencies or other UST owners-operators who are resistant to State compliance efforts.

Factors the Agency will consider in deciding when and where to conduct inspections will include UST compliance levels and the level of States' compliance and enforcement presence. EPA's Regional Offices will be responsible for selecting the States in which Federal action will be undertaken. Regional Offices will have continuing communication with States about the status of State compliance and enforcement activities. EPA will give notice to State officials before undertaking UST inspections or initiating UST enforcement actions (other than issuance of field citations) in accordance with the agreements States have with EPA (e.g., State Program Approval Memorandums of Agreement).

Because EPA believes it is essential that Regional Offices have latitude in deciding where to initiate Federal actions, the Agency will not establish criteria for such decision-making. Some degree of consistency from one Regional Office to another is nevertheless important; EPA believes that such consistency can be achieved through ongoing communication between EPA Headquarters and Regional Offices.

EPA will continue to monitor and enforce UST compliance in Indian Country. Enforcement activities in Indian Country generally will be guided by this strategy. UST facilities not owned and operated by Native American Tribes will be subject to enforcement action in the same manner as UST facilities elsewhere in the U.S. Tribally-owned and operated UST facilities will be subject to enforcement action in accordance with EPA's Indian Policy Implementation Guidance issued on November 8, 1984.

EPA will also conduct UST inspections and issue administrative penalty orders or field citations at Federal facilities using newly clarified Subtitle I authorities. RCRA provides penalty and order authority to EPA for use against federal agencies for violations of UST requirements. States should also inspect Federal facilities and, as appropriate, issue compliance orders.

How EPA will deal with non-compliance

After December 22, 1998, it will be illegal to operate UST systems that are not equipped to protect against corrosion, spills, and overfills. Owners/operators who miss the deadline must bring sub-standard UST systems into compliance by upgrading, replacing, or closing them. If EPA finds them in violation, they will be subject to monetary penalties for periods of non-compliance.

EPA's goal is to ensure that sub-standard UST systems are brought into compliance by the regulated community. When UST owners and/or operators fail to comply with the 1998 deadline requirements, EPA will initiate enforcement actions to ensure prompt compliance with the UST regulations. EPA's position is not to allow continued operation of sub-standard UST systems after December 22, 1998. Toward that end, EPA takes the position that sub-standard UST systems should be temporarily closed until the work necessary to upgrade, replace, or permanently close them is completed. Alternatively, EPA may refer the matter to the State UST implementing agency where a State has the authority to shut down such an UST facility without initiating administrative or judicial proceedings.

In pursuit of its goal, EPA will use all the enforcement tools available for dealing with UST violations, including, administrative and judicial enforcement actions. Judicial enforcement actions are particularly appropriate in situations involving recalcitrant parties. The Agency may use field citations in some circumstances for a limited period of time after the December 1998 deadline. In situations where the inspection shows that a release has occurred or is occurring, EPA's regulations require owners/operators to take immediate action to prevent any further release, as well as other steps to respond to the release. EPA can use RCRA Secs. 7003, 9003(h), or 9006, to issue administrative orders to require cleanup or initiate judicial action requesting temporary or permanent injunctive relief. EPA can also use Sec. 9005 information request letters to gather information from owners/operators of UST facilities.

Temporary closure and upgrading after 1998

UST owners/operators can comply with the Federal regulations by upgrading, replacing, or properly closing (either permanently or temporarily) their sub-standard USTs. During the time in which an UST system is temporarily closed, it is permissible to upgrade, replace, or permanently close it. If the period of temporary closure of a sub-standard UST system extends past December 22, 1998, the UST must be upgraded or replaced before it can be legally operated.

EPA's regulations allow a sub-standard UST system to remain in temporary closure for a maximum of 12 months unless the owner-operator completes a site assessment and obtains an extension from the responsible UST implementing agency; States and the EPA are not obliged to grant such extensions. EPA's position is that sub-standard UST systems, that have not been granted an extension by the implementing agency, should not remain in temporary closure beyond December 22, 1999, even if the USTs were placed into temporary closure after December 22, 1998.

Other Settlement and Enforcement Policies

In appropriate circumstances, EPA may use the Agency's "Interim Policy on Compliance Incentives for Small Businesses" (June 3, 1996)(61 FR 27984)(Small Business Policy); "Policy on Flexible State Enforcement Responses to Small Community Violations" (November 22, 1995)(Small Community Policy); "Supplemental Environmental Projects Policy" (May 1998)(SEP Policy) and the Ability to Pay guidances, in settlements of UST enforcement cases. These policies can be used for settlement purposes only; they are not used for pleadings or at hearings or trials. Copies of the EPA settlement policies are also available through EPA's Internet site at <http://www.epa.gov/OECA>.

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This document does not establish or modify any regulatory requirements; it provides guidance on policies and procedures but does not constitute final Agency action on any matter. It also is not intended, and cannot be relied upon, to create any right, benefit, or trust responsibility enforceable by any party in litigation with the United States.